

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

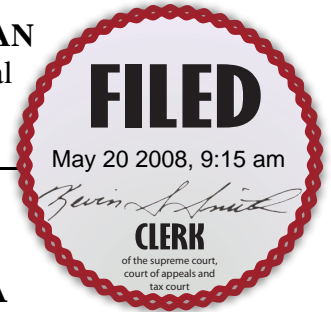
ATTORNEY FOR APPELLANT:

**JOHN C. BOHDAN**  
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**GEORGE P. SHERMAN**  
Deputy Attorney General  
Indianapolis, Indiana



---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

SHARICO DEVON BLAKELY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 02A05-0704-CR-222

---

APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Kenneth R. Scheibenberger, Judge  
Cause No. 02D04-0609-FA-52

---

**May 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Sharico Devon Blakely appeals his convictions and sentence for three counts of dealing in cocaine,<sup>1</sup> each as a Class A felony, and one count of possession of cocaine with intent to deliver<sup>2</sup> as a Class A felony. Blakely raises three issues, which we consolidate and restate as:

- I. Whether there was sufficient evidence to support his convictions.
- II. Whether his sentence was proper.

We affirm in part, reverse in part, and remand with instructions.

### **FACTS AND PROCEDURAL HISTORY**

In May 2006, a confidential informant (“CI”) in Allen County, Indiana agreed to work with the police after drugs were recovered from his house. The CI told police that he knew his supplier by the name of “Rico.” *Tr.* at 177. The CI gave police a general description of Blakely’s build and vehicle, a maroon Oldsmobile.

The police had the CI contact Blakely through his cell phone number, to arrange for the purchase of an ounce of cocaine and to cover a debt he owed from past deals. On May 3, 9, and 18, 2006, the police searched the CI and his vehicle, the CI was given buy money by the police, and he was briefed on how to execute the deals. On May 3, Blakely told the CI to meet him at the Willow Creek Crossing Apartments. When the CI arrived with Detective Jack Cain, he spotted Blakely and three others in a Toyota. The CI exited his vehicle and walked over to Blakely and noticed the female in Blakely’s vehicle was counting a

---

<sup>1</sup> See IC 35-48-4-1(a)(1)(C).

<sup>2</sup> See IC 35-48-4-1(a)(2)(C).

substantial amount of cash. The CI gave Blakely the buy money, and Blakely handed the CI a bag containing “a big white piece of cocaine.” *Tr.* at 191. The CI returned to Detective Cain, and the two returned to the Allen County Sheriff’s Department where detectives searched the CI again. After the buy was completed, Detective Stephen Haxby followed Blakely’s vehicle to a duplex located in Pointe Center Cove. Laboratory tests confirmed that the substance purchased by the CI was 25.87 grams of cocaine.

On May 9, 2006, the CI again arranged to purchase cocaine from Blakely. Blakely, accompanied by the same three companions, was in his maroon Oldsmobile. The CI purchased two separate bags of cocaine, and the police undertook the same recovery procedure and confirmed that both bags contained cocaine and that one bag weighed 22.75 grams, and the other weighed 26.14 grams.

On May 18, 2006, the police met the CI to arrange for another cocaine purchase. The police wired the CI and gave him cash to complete the deal. The CI contacted Blakely to organize the purchase of a half-ounce of cocaine and to pay the remainder due for the extra amount of cocaine the CI received from Blakely during the previous deal. Blakely told the CI to meet him at a gas station. This time, Blakely was in a blue minivan and told the CI to get in the minivan. The CI gave Blakely the money, and Blakely gave the CI the cocaine and told the CI that he would call him in ten minutes. The police recovered the cocaine under the same procedure and laboratory testing confirmed that the substance was 10.94 grams of cocaine. The blue minivan returned to Pointe Center Cove. On May 22, 2006, Blakely was arrested and his vehicle and residence were searched. The police recovered several cell

phones, scales, a firearm, and more cocaine, some of which was separated into small clear bags.

On September 26, 2006, Blakely was charged with four counts of Class A felony dealing in cocaine, one count of Class D felony possession of a controlled substance, and one count of Class D felony possession of marijuana. On January 30, 2007, just prior to trial, the State dismissed the Class D felony counts and amended the date of Count IV. Because the trial court found the change to be of form and not substance, it accepted the amendment over Blakely's objection. Blakely's case proceeded to trial, and a jury found Blakely guilty on all counts. At sentencing, the trial court found Blakely's criminal history, probation revocations, and lack of remorse were aggravating factors. The trial court sentenced Blakely to fifty years executed for all four counts with Counts I through III running concurrently, and Count IV running consecutively to counts I through III for a total executed sentence of one hundred years. Blakely now appeals.

## **DISCUSSION AND DECISION**

### **I. Sufficiency of the Evidence**

Blakely claims that the CI's testimony was incredibly dubious and that there was insufficient evidence to support his convictions. In addressing a claim of insufficient evidence, we must consider only the probative evidence and reasonable inferences supporting the judgment, without reweighing the evidence or assessing witness credibility, and determine whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jacobs v. State*, 802 N.E.2d 995, 998 (Ind. Ct. App. 2004). Under the incredible dubiousity rule, a reviewing court may impinge upon the fact-finder's responsibility

to judge witness credibility when a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence. *Id.*

First, Blakely claims that there was insufficient evidence to support his convictions because when the CI was given a photo array, he stated that he was uncertain of who the dealer was. He then ultimately selected an individual named Rico Watson, and Detective Cain corroborated that Watson was the same individual he observed with the CI at the initial buy. Rico Watson, however, was not the man the CI met for the drug deals, and was, in fact, working for the county seven days a week in May 2006. Because the CI's testimony was the only evidence of identification and was initially incorrect, Blakely claims that it was incredibly dubious. At trial, the CI testified that Blakely, under the alias "Rico," delivered cocaine to him in excess of three ounces on three separate dates and identified Blakely as the person who sold him the cocaine on each occasion. *Tr.* at 189-90. The officers who worked with the CI to execute the purchases confirmed the transactions, the chain of custody, the identity of the substance, and other circumstances surrounding the transactions. Although there were conflicts in the evidence at trial, it was for the trier of fact to resolve them. *Miller v. State*, 770 N.E.2d 763, 774-75 (Ind. 2002). There was sufficient evidence to convict Blakely on Counts I through III.

Next, Blakely contends that the State failed to prove every element of Count IV, possession of cocaine with intent to deliver. In order to convict Blakely of possession of cocaine with intent to deliver as a Class A felony, the State was required to prove that Blakely physically or constructively possessed three grams of cocaine or more in such a

manner that the jury could infer his intent to deliver the cocaine. IC 35-48-4-1. In order for the State to establish constructive possession, it must demonstrate the defendant's knowledge of the presence of the drugs, or such knowledge may be inferred from the defendant's exclusive possession of the premises where the contraband is located. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). If the defendant is not in exclusive control of the premises where the contraband is located, then his or her intent to control and possess the substance may be inferred from the surrounding circumstances. *Id.*

Here, Blakely was arrested when he was returning to the residence located in Pointe Center Cove, a location that officers had witnessed him enter on several occasions. The arresting officers discovered a large amount of cash, two cell phones, one of which had been illegally cloned, and a scale in his vehicle. Later, when the officers completed a search of the residence, they discovered cocaine and implements to divide and distribute it, and several small bags containing cocaine in the kitchen and between the cushions of the living room love seat. This evidence was sufficient to prove that Blakely constructively possessed the cocaine and intended to deliver it. *See Davis v. State*, 791 N.E.2d 266, (Ind. Ct. App. 2003), *trans. denied*. There was sufficient evidence to support Blakely's conviction for possession of cocaine with intent to deliver as a Class A felony.

### **III. Sentencing**

Blakely challenges his sentence in two respects. First, he claims that the trial court abused its discretion in ordering his sentence and, second, that his sentence is inappropriate

in light of the nature of the offense and his character.<sup>3</sup> Sentencing decisions are within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id.* We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491.

Blakely challenges his sentence of one hundred years arguing that the trial court incorrectly weighed the aggravating and mitigating circumstances and that the sentence is inappropriate considering the nature of the offense and his character. Because we no longer review the weight a trial court assigns to aggravating and mitigating circumstances, and because Blakely has a substantial criminal history of dealing narcotics, we do not address Blakely's first argument and will only review his sentence for appropriateness. *Id.*

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005). Blakely contends that his sentence of one hundred years was

---

<sup>3</sup> Blakely actually claims that his sentence is manifestly unreasonable under *former* Indiana Appellate Rule 17(B). *Appellant's Br.* at 18. This rule no longer exists, and appellate courts only have discretion to

inappropriate in light of the nature of the offense and his character and, therefore, that it should be revised. We agree.

Ordering consecutive, enhanced sentences is appropriate for only the worst of crimes by the worst of offenders. *Perry v. State*, 751 N.E.2d 306, 308 (Ind. Ct. App. 2001). Here, while Blakely's character as reflected in his prior criminal history, justifies enhancing his sentence or making the advisory sentences consecutive, it does not justify doing both, and we conclude that a one-hundred-year sentence is inappropriate. We remand with instructions to enter the advisory sentence of thirty years on all counts with Counts I, II, and III to run concurrently to each other, and Count IV to run consecutively to the others for a total of sixty years executed.

Affirmed in part, reversed in part, and remanded with instructions.

FRIEDLANDER, J., and BAILEY, J., concur.